

**BEFORE THE
COMMISSION OF LANDLORD TENANT AFFAIRS
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

Doug and Michelle Dawson
Complainants

V.

David Sellers
Respondent

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Case No. 31200

Rental Facility: 12603 Granite Ridge Drive, Gaithersburg, MD (Unlicensed)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland (the “Commission”), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended (“County Code”), and the Commission having considered the testimony and evidence of record, it is therefore, this 2nd day of November, 2010 found, determined, and ordered as follows:

BACKGROUND

On October 15, 2009, Doug and Michelle Dawson (“Complainants”), former tenants at 12603 Granite Ridge Drive, Gaithersburg, MD (“Property”), an unlicensed single family house, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs (“Department”), in which they alleged that their landlord, David Sellers (“Respondent”), owner of the Property: (1) assessed unjust charges against their security deposit plus accrued interest after the termination of their tenancy, in violation of Section 8-203 (f)(1) of the Real Property Article, Annotated Code of Maryland, 1999, as amended (“Real Property Article”); (2) failed to send them an itemized list of damages claimed against their security deposit within 45 days after the termination of their tenancy, in violation of Section 8-203(g)(1) of the Real Property Article; (3) failed to reimburse them for payments they made for repairs for which they were not responsible, in the amount of \$645.00, in violation of Section 29-30(a)(3) of the Montgomery County Code, 2001, as amended (“County Code”); and (4) failed to return some personal items they left at the Property (briefcase containing 3 antique mason jars full of change and a crucifix that was left in the dining room).

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission on Landlord-Tenant Affairs (the “Commission”) for its review, and on April 6, 2010, the Commission voted to accept jurisdiction of this case, and scheduled a public hearing for May 25, 2010, at 6:30 P.M.

By correspondence dated April 30, 2010, the Respondent requested a postponement of the May 25, 2010 hearing due to a previously scheduled trip to attend to family matters. This request was granted. Subsequent to this postponement, the Respondent offered to settle the issues in this case and the hearing was stayed pending settlement. However, the Respondent failed to comply with the terms with which he initially agreed and the hearing was rescheduled for October 19, 2010, at 6:30 P.M.

The record reflects that both the Complainants and the Respondent were given proper notice of the rescheduled hearing date and time (See pages 57-59 of Commission's Exhibit No. 1). Present and offering evidence were the Complainants, Doug and Michelle Dawson. The Respondent, David Sellers, failed to appear as of 7:00 P.M. on October 19, 2010.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. Also, without objection, the Commission entered into the record page 59 of Commission's Exhibit 1 which is an Affidavit of Service, signed by Housing Code Inspector Lynn McCreary of the Department, attesting to the fact that the Respondent was personally served by her with a Summons, Statement of Charges and Notice of Hearing on September 14, 2010, identified as Commission's Exhibit No. 2.

FINDINGS OF FACT

Based on the evidence, the Commission makes the following findings of fact:

1. On April 18, 2008, the Complainants and Respondent signed a one-year lease ("Lease") for the rental of the Property, which commenced on June 1, 2008 and expired on May 31, 2009.
2. On April 18, 2008, the Complainants paid the Respondent a security deposit in the amount of \$1,950.00, which is properly receipted in the Lease.
3. The Commission finds credible the Complainants' testimony that on April 1, 2009, they advised the Respondent that the air conditioning unit at the Property was not functioning properly.
4. The Commission finds credible the Complainants' testimony that on April 1, 2009, the Respondent advised them to pay for the repair to the air conditioning unit and that he would reimburse them for any costs incurred.
5. The Commission finds that the Complainants paid for the repair to the air conditioning unit on April 24, 2009, which cost was \$243.00, which was not reimbursed by the Respondent.
6. On May 7, 2009, the Respondent sent the Complainants an email requesting that they vacate the Property effective May 31, 2009, which notice was subsequently extended until June 30, 2009.

7. On June 24, 2009, the air conditioning unit at the Property again failed and the Complainants attempted to notify the Respondent but were unable to reach him.

8. The Commission finds that the Complainants subsequently had the air conditioning unit repaired at the cost of \$152.00 and the total cost of both repairs was \$395.00.

9. The Complainants vacated the Property on June 30, 2009, having paid rent in full through that date.

10. On October 14, 2009, the Complainants forwarded to the Respondent a letter requesting the return of their security deposit plus interest, reimbursement for repairs and monetary compensation for the gas grill and the return of some personal items also left at the Property (briefcase containing 3 antique mason jars full of change and a crucifix that was left in the dining room).

11. The Commission finds that the issue of the gas grill and the return of personal property left after they vacated the Property is not within its statutory jurisdiction so no decision will be made regarding these items.

12. The Commission finds that the Respondent failed to send an itemized list of damages to the Complainants within 45 days after the termination of their tenancy.

13. The Commission finds that the Respondent failed to credit accrued interest to the Complainants' security deposit.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. Pursuant to Section 8-203 (g)(1) and (2) of the Real Property Article, "If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred, and "If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages." The Commission finds that the Respondent's failure to send an itemized list of damages within 45 days together with a statement of costs actually incurred has created a defective tenancy.

2. The Commission finds that the Respondent failed to credit the Complainants' security deposit with accrued interest in compliance with Section 8-203(e)(1) of the Real Property Article, which amount is \$58.50 (\$1,950[security deposit] X 3% = \$58.50) and has created a defective tenancy.

3. The Commission finds that the Respondent failed to make needed and necessary repairs to the Property, in violation of Section 29-30(a)(3) of the County Code and that the Complainants incurred actual costs in the amount of \$395.00 to make those repairs.

4. The Commission concludes that the Respondent's failure to return any portion of the Complainants' security deposit plus accrued interest in violation of Section 8-203(e) (4) of the Real Property Article, as well as his failure to make needed and necessary repairs to the Property, in violation of Section 29-30(a) (3) of the County Code, which caused the Complainants to incur additional costs in the amount of \$395.00, to be unreasonable. To award a penalty, as requested by the Complainants, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondent's conduct in wrongfully withholding part of the Complainants' security deposit and whether or not the Respondent acted in bad faith. It is the opinion of the Commission that although the Respondent failed to produce any probative evidence regarding the withholding of the Complainants' security deposit, he does not have a history with the Department so this failure does not rise to the level of egregiousness and bad faith necessary to award a penalty.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$2,403.50**, which sum represents the Complainants' security deposit (\$1,950.00) plus accrued interest (\$58.50), and \$395.00 paid by the Complainant for repairs that were the Respondent's responsibility.

Commissioner David Peller, Commissioner Jay Hutchins, and Commissioner Tangela Bullock, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent, David Sellers, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check made payable to Doug and Michelle Dawson, in the full amount of \$2,403.50.

The Respondent, David Sellers, is hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of a \$500.00 civil fine (Class A violation), should the Commission determine that the Respondent has not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney pursuant to Section 29-48(c) of the County Code.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Be advised that pursuant to Section 29-49 of the County Code, should the Respondents choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$2,403.50) if they seek a stay of enforcement of this Order.

Tangela Bullock, Panel Chair
Commission on Landlord-Tenant Affairs